## UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REBECCA WEINREB and DAVID M. WEINREB,	) )
Plaintiffs,	) Case No. 1:16-cv-06823-DAB
v.	)
XEROX BUSINESS SERVICES,	)
LLC HEALTH AND WELFARE PLAN,	)
CONDUENT HR CONSULTING, LLC,	)
AND CAREMARK PCS HEALTH LLC,	)
Defendants.	)

## PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT

Plaintiffs Rebecca Weinreb and David M. Weinreb move pursuant to Fed. R. Civ. P. 59(e) and Local Civ. R. 6.3 to alter or amend the judgment dismissing the Second Amended Complaint issued August 30, 2018. (Docket No. 90). As set forth in the accompanying Memorandum of Law, Plaintiffs respectfully submit that the Court clearly erred in dismissing Plaintiffs' fourth claim for relief against Defendant Caremark for sex discrimination under Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, because the Court overlooked that Section 1557 authorizes a private right of action for disparate impact sex discrimination claims, which was confirmed by the agency charged with interpreting the relevant provisions, the Department of Health and Human Services. Applying the correct legal standard, Plaintiffs adequately pled a claim for sex discrimination under a disparate impact theory.

WHEREFORE, Plaintiffs request that the Court alter or amend the judgment dismissing Plaintiffs' Second Amended Complaint and reopen the case to permit Plaintiffs to proceed under their fourth claim for relief.

Dated: September 27, 2018

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<sup>\*</sup>Admitted to S.D.N.Y., but pro hac vice motion forthcoming per Judiciary Law § 470

<sup>\*\*</sup>Pro hac vice motion forthcoming

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2018, I electronically filed the foregoing Notice of Motion to Alter or Amend the Judgment and accompanying Memorandum of Law with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record at their e-mail address on file with the Court.

/s/ Bernard Weinreb

Counsel for Plaintiffs